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IN THE UNITED STATES DISTRICT
COURT for the district of West Virginia

OTIS MAYS

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Kleeh

MJA

Williams

FILED

JAN 07 2021

VS.

CASE No.

U.S. DISTRICT COURT-WVND
CLARKSBURG, WV 26301

FCI-Gilmer, Warden Browers,
Jane doe 1-5, John doe 1-5 and
Unit manager Berryman.

COMPLAINT

1. The plaintiff, Proceeding Pro Se, brings this civil rights complaint against the Defendant for an emergency TRO and for an Injunctive relief and a Injunction Under the bivens doctrine and allege as follows:

Jurisdiction

1. All of the events described in this complaint occurred in the District of West Virginia.
2. The Defendants are were United State Federal law enforcement officials when the events described

In this complaint occurred and are sued under the Bivens doctrine.

Parties

The Defendants, FCI-Gilmer, Warden Bowers, Unit Manager Berryman, Jane Doe 1-5, John Doe 1-5 and Warden Hussins. Was employed as either a Warden, Unit Manager, Correctional Officer, Case Manager, Counselor, Captain, AW or an LT at the Prison when the events in this complaint occurred, and is sued in both their personal and in their official capacity.

The Plaintiff, OHS Mays, was an inmate, when the events in this complaint occurred.

Immunity

The violations in this complaint were intentionally committed against statutory

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and constitutional rights rights clearly established at the time of the violation. No proper defense of qualified immunity can be raised as a result.

Pearson v. Callahan 556 U.S.

223, 231 (2009). The acts committed by the defendants giving rise to this complaint were the results of willful, reckless, malicious, and wanton misconduct by the defendants and are not covered by any kind of immunity. The defendants are not entitled to indemnity. The existence over a period of months of the practices and policies in question in this complaint, during which these practices have been alleged and appealed without responsive reply or meaningful result, demonstrate a mental state of deliberate indifference to conditions on the part of the defendants.

References in this petition to general policies and conditions are offered without any intent to raise claims on behalf of third parties.

Facts

On November 10th until Decem 18th. I talked to several FCI-Gilmer staff about my court hearings that was post to happen by video conference on Dec/18th at 9:00AM. But was told the day of the hearings it would have to be done by teleconference due to issue with there video machine. so I missed my first 15 min of my hearings. I talked to John doe who also talked to court staff setting up my court hearings. I wrote the warden as well as the captain, unit manager

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Berryman A cop out/kite trying to make sure that my hearings was set and all of them either told me that they would look into it. But none of them got it done.

Defendants Warden Hussins, Bowers, Berryman, John Doe 1-5 and Jane Doe 1-5 All are violating my First Amendment rights, and committing the state law tort of negligence, by not allowing me "ANY" Access to law library access items. I have been locked in my cell for 24 hours a day since Dec/27 or 28th/2020 Not allowed access to the law library to review books or anything else that can help me file motions or research case law. Not have I been allowed to use the law library computer which is in my unit not even 12 feet from my room door.

I have verbally talked to Unit Manager Berryman 3 different times about getting access to the law library computer but has told me due to COVID "No inmates are allowed out of their cells due to a COVID outbreak on the compound."

I have wrote Berryman a COP OUT stating that there are multiple inmates that come out there cells "Everyday to clean" and some that are just allowed to come out and do what ever." so what he says can't be true. This was done on Dec-31-20 have not received a response. I have filed grievances on the issue to the warden and got an generic letter that is sent out to all inmates. I did not ask about being released

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ON COVID but for some reason his letter talks about COVID issue and being released. This makes me believe he didn't really read my letter. I have attached my letter and Warden HUSSMS response as well as my response to his Gernig letter, BUT have yet to receive a response. I have shown both Mr. Berryman and Counciler S. Frame dates of my due date to respond to my 2 case that I am pro-se in that judges in those case gave me deadlines to respond to. BUT NOTHING has been done to allow me ANY time on the law library computer to help me file my motion. BY doing what they are doing they are DENYING me access to the court.

Defendants Berryman, Huggins, John doe 1-5 and Jane doe 1-5. are currently violating and have violated my rights by denying me access to the courts in violation of the Plaintiff's Amendment + right to First Amendment, thus creating a basis for a claim against FCI-Gilmer, Berryman, Warden HUGGINS, BOWERS, John doe 1-5 and Jane doe 1-5. Under the bivens doctrine.

Prayer for relief

Wherefore, the Plaintiff's request the following relief:

Order the defendant to allow me access to the law library to use the books and law library computer to research case law and use DVD Player to listen to my discovery disc and other audio and video's from my Discovery.

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2 I ask for the court to order I get at least 3-5 hours a week access.

3 YOUR HONOR

I am not looking for any money only to be given access to the law library to be allowed to the things that can and will help me file and respond to court orders and motions. Like I have stated I have tried to talk to several staff members and write grievances to handle this at the prison before filing this with the court. But it got me nowhere. I have already been given 2 continuances and sure the court will not give me another. MY next deadline date is Jan-19th-21. One of the reasons I believe this is an emergency issue is because in less than 14 days if I do not have

my motion in my case will be dismissed and I'll lose out on my \$350 dollars I paid and have to repay and settle all my legal filings I've already filed. The prison also allows inmates out to clean the unit I'm in when inmates are only allowed to min showers on Mondays Wednesdays and Fridays.

Then there cellmates are allowed to be out doing what ever. The prison has alot of inmates here with covid I agree but I can't see how it can be a problem for inmates with pending court motions to be allowed 60 minutes a day to sit at a computer to do case law research. The CDC has stated face covering and 6 feet social distancing from other inmates, which I will and always where a

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a face covering and there are only maybe 4 other inmates out in the unit. There is always 1 officer in the unit at all time.

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I've had this issue before with FOI-Gilmer staff last year and I wrote my judge in MN and she stated "The court encourages BOP officials to ensure that, consistent with legitimate institutional interests, Mr. Mays has access to the materials and facilities he needs to litigate his case. However the court declined to issue an order. Please see attached.

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I have done everything to try to resolve this is but all attempts have failed. I have been told by staff we will not be allowed

OUT OUR CELLS TO MID
Feb and that's at the
earliest. CURRENTLY MY UNIT
HAVE NOT BEEN TESTED BY
ANY MEDICAL STAFF IN THE
LAST 2 WEEKS SHOWING ANYONE
HAS COVID. THEY HAVE
JUST PUT MORE THEN 10 PLUS
INMATES IN MY UNIT ON
I-5-21 FROM OTHER PRISONS.
INMATES ARE ALLOWED TO GO
SH IN THE SAME SPACE TO
COLLECT THEIR MEDS, THERE ALLOWED
TO SEE MEDICAL STAFF AS WELL
DOWN BY THE COMPUTER.

ALL I'M TRYING TO DO IS BE ALLOWED
LAW LIBRARY USE TO COMPLETE
MY LEGAL FILINGS.

Thank you
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